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11 THOMAS A. SEAMAN

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 STEVE CHEN, USFIA, INC.,
19 ALLIANCE FINANCIAL GROUP,
INC., AMAUCTION, INC., ABORELL
MGMT I, LLC, ABORELL
20 ADVISORS I, LLC, ABORELL REIT II,
LLC, AHOME REAL ESTATE, LLC,
21 ALLIANCE NGN, INC., APOLLO
REIT I, INC., APOLLO REIT II, LLC,
22 AMKEY, INC., US CHINA
CONSULTATION ASSOCIATION,
23 AND QUAIL RANCHO GOLF
COURSE, LLC,,

24 Defendants.

Action No. 2:15-CV-07425-RGK-PLA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF RECEIVER THOMAS
A. SEAMAN, FOR ORDER:
(1) APPROVING FINAL REPORT
AND ACCOUNTING;
(2) AUTHORIZING PAYMENT OF
FINAL FEE APPLICATIONS OF
RECEIVER AND PROFESSIONALS;
(3) AUTHORIZING CORRECTIVE
DISTRIBUTIONS ON ALLOWED
CLAIMS; (4) AUTHORIZING
FILING FINAL TAX RETURNS;
(5) AUTHORIZING
ABANDONMENT OR
DESTRUCTION OF RECORDS; AND
(6) CLOSING RECEIVERSHIP CASE
AND DISCHARGING RECEIVER**

Date: June 17, 2024
Time: 9:00 a.m.
Ct rm: 850, 8th Floor

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Thomas A. Seaman (the "Receiver") was appointed as the permanent receiver for Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities") pursuant to this Court's October 6, 2015 Preliminary Injunction and Orders (1) Freezing Assets, and (2) Appointing A Permanent Receiver; (3) Prohibiting Destruction of Documents; and (4) Requiring Accountings (the "Appointment Order") (ECF No. 14). As of the date this Motion of Receiver for Order: (1) Approving Final Report and Accounting; (2) Authorizing Payment of Final Fee Applications of Receiver and Professionals; (3) Authorizing Corrective Distributions to Claimants; (4) Authorizing Submission of Appropriate Tax Returns; (5) Authorizing Abandonment or Destruction of Records; and (6) Closing Receivership Case and Discharging Receiver (the "Motion"), the Receiver believes he has – with the assistance of his Professionals¹ – fulfilled each of his responsibilities to the fullest extent possible, and that further efforts to administer the receivership would not yield a net benefit to the receivership estate or the entities' investors or creditors.

As set forth in further detail in the Receiver's Final Account and Report filed concurrently herewith, some of the Receiver's most significant accomplishments during the pendency of the receivership include:

¹ For the purposes of this Motion, the Receiver's "Professionals" are his attorneys of record for the instant receivership, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins").

1 1. Marshaling and preserving all receivership assets ("Receivership
2 Assets" or "Assets"). Ultimately, the Receiver recovered and collected a total of
3 more than \$80 million in gross recoveries. After payment of operating expenses for
4 the Assets (i.e. mortgage payments, hotel operations, property taxes, etc.), the
5 Receiver distributed approximately \$64 million to investors and creditors, as
6 reflected in his concurrently filed Final Report and Accounting (the "Final Report");

7 2. Disposing of Assets, including via the sale or abandonment of the
8 Entities' real and personal property Assets, including 17 real property assets,
9 comprised of single family homes owned by defendant Steve Chen and his relatives
10 and acquaintances, as well as a hotel, an apartment building, and vacant land
11 purchased;

12 3. Completing a detailed Forensic Accounting Report regarding the
13 financial activities and condition of the Receivership Entities (ECF No. 406), a
14 monumental undertaking that accounted for over \$207 million in funds that flowed
15 into and out of the Receivership Entities;

16 4. Fulfilling the tax obligations of the Receivership Entities including
17 obtaining the agreement of the Internal Revenue Service (the "IRS") to subordinate
18 its claims and prospective claims in accordance with Department of Justice, Tax
19 Division Directive 137 (which enabled the Receiver to distribute the receivership
20 proceeds to the investor victims instead of the IRS);

21 5. Proposing and securing Court approval for a claims process and plan
22 for distribution of Receivership Assets to investors and creditors;

23 6. Making two distributions to 6,872 investors and creditors of the
24 Receivership Entities with allowed claims, in the aggregate amount of
25 approximately \$63,385,939.22;

26 7. Preparing and submitting 27 periodic reports to the Court regarding the
27 status and results of the Receiver's administration of the estate of the Receivership
28 Entities (the "Receivership Estate" or "Estate").

1 The specific accomplishments of the Receiver and his Professionals are summarized
2 herein, and in the Receiver's Final Report, submitted concurrently with the instant
3 Motion.

4 Having completed his work, the Receiver has determined, in his reasonable
5 business judgment, that each of his responsibilities under the Appointment Order
6 and other Court orders governing the instant receivership has been satisfied, and that
7 the costs of continuing the present receivership now outweigh any potential benefit.
8 On that basis, the Receiver believes that it is now appropriate to pay administrative
9 fees and expenses, file final tax returns, close the receivership case, and discharge
10 and release the Receiver. As detailed below, the Receiver also requests authority to
11 distribute \$58,061.38 to 24 investors to correct errors or other inequities in the
12 original distributions on their Allowed Claims.

13 Accordingly, the Receiver respectfully requests that this Court enter an order:
14 (1) approving the Receiver's Final Report; (2) authorizing payment of the fees and
15 expenses presented in the Final Application for Payment of Fees and
16 Reimbursement of Expenses of Receiver and his Professionals, filed concurrently
17 herewith (the "Final Fee Applications"); (3) authorizing the Receiver to make a
18 corrective distribution to a claimant; (4) authorizing the Receiver to submit any
19 necessary and appropriate tax returns for the Entities or the Estate; (5) authorizing
20 the Receiver to abandon or destroy, as necessary, Receivership Entity records in
21 connection with the wind-down procedures presented herein; and (6) authorizing the
22 Receiver to complete any outstanding tasks necessary to wind-down and close the
23 receivership, and thereafter closing the receivership and discharging and releasing
24 the Receiver.

25 **II. RELEVANT FACTUAL BACKGROUND.**

26 A full recitation of the procedural history of the above-captioned action is
27 reflected in Receiver's concurrently submitted Final Report and Receiver's 27
28

1 Interim Receiver Reports filed herein. As to this Motion, the relevant facts are as
2 follows:

3 The above-captioned enforcement action was commenced by the Plaintiff
4 Securities and Exchange Commission (the "Commission") on September 28, 2015.
5 (ECF No. 1.) The Receiver was subsequently appointed on October 6, 2015. Since
6 his appointment, the Receiver has administered the Estate and all Receivership
7 Assets in accordance with the Court's instructions, including specifically:
8 (1) marshaling and preserving Receivership Assets; (2) completing the disposition
9 of real and personal property Assets; (3) performing accountings and analysis of the
10 Receivership Entities' financial activities and condition; (4) eliminating and
11 addressing the Entities' liabilities; (5) recommending the claims process, appropriate
12 treatment of claims, and making a distribution; (6) negotiating with tax agencies to
13 subordinate their claims; and (7) preparing reports for this Court. (See concurrently
14 filed Declaration of Thomas A. Seaman ("Seaman Decl.") ¶ 2-3.) The specific
15 actions undertaken to-date are identified in the Receiver's 27 Interim Reports, and
16 the Receiver's Final Report, filed herewith. As reflected in the Final Report, the
17 successfully recovered approximately \$80 million. After payment of the cost of
18 operating the recovered Assets, such as apartments and a hotel, as well as the
19 administrative expenses for the receivership, the Receiver distributed
20 \$63,385,939.22 to investor claimants.

21 The Receiver has concluded, in his reasonable business judgment, that
22 continued administration of the receivership case will not result in the recovery of
23 additional Receivership Assets and will not increase the amount of Assets available
24 to the Receivership Estate. (Seaman Decl. ¶¶ 5-6.) Thus, the costs of continuing the
25 receivership now outweigh the benefits. (Id.) Given this determination, and having
26 fulfilled his responsibilities under the Appointment Order and other Court orders in
27 this action, the Receiver believes it is now time to close the receivership case and
28 discharge and release the Receiver. (Id. at ¶ 6.) To that end, the Receiver

1 respectfully requests that this Court enter an Order approving the Receiver's Final
2 Report; authorizing payment of the fees and expenses requested in the Final Fee
3 Applications; authorizing the Receiver to make the corrective distributions to the
4 affected claimants; authorizing the Receiver to file appropriate final QSF tax
5 returns; authorizing the Receiver to abandon or destroy remaining books and records
6 (which were not previously destroyed); and closing the receivership and discharging
7 and releasing the Receiver upon the Receiver's completion of these tasks. (Id.) As
8 is customary in these matters, the Receiver proposes to submit a Final Declaration to
9 the Court reflecting the completion of all closing tasks when completed (the "Final
10 Declaration"), and respectfully requests that the receivership be terminated, without
11 further Court order, upon the Receiver's filing of the Final Declaration. (Id. at ¶ 5-
12 6.)

13 **III. PROCEDURE FOR CLOSING RECEIVERSHIP AND DISCHARGING**
14 **RECEIVER.**

15 **A. Receivership Final Closing Tasks.**

16 By this Motion, the Receiver respectfully requests Court approval of, and
17 authorization to complete, the final closing tasks detailed below in connection with
18 closing the instant receivership and discharging the Receiver:

19 1. Approval of the Receiver's Final Report.

20 The Receiver's Final Report (which also appends his final accounting for the
21 Estate) has been submitted to the Court concurrently with this Motion. (Id. at ¶ 6;
22 see also, Receiver's Final Report, submitted concurrently herewith.) The Final
23 Report summarizes the actions of the Receiver and his Professionals during the
24 pendency of the receivership case, and provides summary descriptions of his work,
25 asset preservation and recovery, claims administration, and reporting efforts. A
26 copy of the Receiver's final accounting summary, reflecting receipts and
27 disbursements for the receivership through May 3, 2024 is attached as **Exhibit "A"**
28

1 to the Final Report. The Receiver respectfully requests that the Court approve his
2 Final Report.

3 2. Payment of Fees and Expenses of Receiver and his Professionals
4 and Holdback Amounts.

5 Concurrently with this Motion, the Receiver and his Professionals have
6 submitted their Final Fee Applications, requesting payment of their respective fees
7 and expenses incurred from October 1, 2023 – May 3, 2024, a reserve of up to
8 \$50,000 to cover costs to prepare the 2023 and 2024 income tax returns and the
9 Receiver's and Professional's anticipated and unforeseen fees and costs after the
10 termination of the receivership, which amount will be turned over to the SEC if not
11 needed, and payment of sums held back (the "Holdbacks") over the past 8 years
12 from previously approved fee applications. (See Final Fee Applications filed
13 concurrently herewith.). The Court previously approved the Receiver's and his
14 Professionals' administrative and professional fees through September 30, 2023 in
15 the amount of \$5,085,758 for the Receiver, \$1,824,232.95 for his counsel, and
16 \$268,520.05 for Berkeley Research Group ("BRG") who provided the Receiver
17 forensic digital assistance.

18 However, 10% of the Receiver's fees, 20% of his counsel's fees and 10% of
19 BRG's fees were not paid and were held back pending the conclusion of the case.
20 These holdbacks are as follows:

21 Thomas Seaman Company	\$508,575.80
22 Allen Matkins	\$364,685.92
23 <u>Berkeley Research Group</u>	<u>\$26,852.00</u>
24 Total	\$900,113.72

25 Therefore, the Receiver respectfully requests authorization at this time to pay
26 the Professionals' and Receiver's: (1) unpaid holdbacks in the aggregate amount of
27 \$900,113.72; (2) outstanding administrative and professional fees and expenses,
28 from October 1, 2023 – May 3, 2024 in the amount of \$179,128.85; and (3) the

1 anticipated fees and expenses of the Receiver and his Professionals to file tax
2 returns and complete the wind-down and termination of the instant receivership, in
3 the aggregate amount of not more than \$50,000, to pay for the cost to wind up the
4 receivership (i.e., addressing these closing motions, preparation of final tax returns,
5 destruction of records, closing bank accounts, and related closing tasks.), as set forth
6 in further detail in the Final Fee Applications. The amount of the Closing Reserve
7 that is not used will be reflected in the Receiver's Final Declaration and turned over
8 to the SEC.

9 3. Corrective Distribution.

10 The Receiver has made two distributions to those claimants with Allowed
11 Claims. Through this process, the Receiver has learned that several investor
12 claimants with Allowed Claims did not receive a payment or the amount that they
13 received was incorrect, either due to an error of the investor or the Receiver. (Id. at
14 ¶7.) In addition, several investors who did not negotiate their first distribution check
15 and who were later deemed by the Court to have their claim extinguished, later
16 surfaced. Given that there is a surplus in the receivership that will otherwise be
17 turned over to SEC for payment to the United States Treasury, the Receiver believes
18 it is fair and appropriate to correct these issues. There are three categories of
19 corrective distributions: 1) 18 investors who did not negotiate their first distribution
20 check and who were later deemed by the Court to have their claim extinguished,
21 \$30,089.54; 2) three investors with stale dated Second Distribution Payments,
22 \$253.89; and three corrections to claims that were made after the Court's prior cut-
23 off dates and therefore deemed rejected, \$27,717.95. (Id.) The Receiver
24 recommends that, as part of the termination of the instant receivership, the Court
25 authorize him to make the corrective distributions of \$58,061.38 to these 24
26 investors.

27 Any remaining funds available after payment of approved Administrative
28 Expenses will be turned over to the SEC for payment to the United States Treasury

1 c/o the Commission as set for the Final Account and Report filed concurrently
2 herewith.

3 4. Submission of Appropriate Tax Returns.

4 The Receiver is required to submit appropriate tax returns for each calendar
5 year of the pendency of the receivership. Accordingly, the Receiver anticipates
6 submitting any necessary and appropriate tax returns before they are due, and
7 requests Court authorization to do so.

8 5. Abandonment or Destruction of Records.

9 The Receiver previously received authority to destroy the bulk of documents
10 and records obtained during his administration of the Estate. However, the Receiver
11 still maintains some physical and electronic records which were held pending the
12 final distributions and the closing of the case. Some of these documents contain
13 private financial information or other sensitive information of the Receivership
14 Entities' investors. Certain personal property, primarily amber and costume jewelry
15 with little to no pecuniary value was also returned by the FBI last week that the
16 Receiver will need to dispose of. Accordingly, the Receiver proposes that, within
17 ninety (90) days after the entry of an order approving this Motion and the Final
18 Report, the Receiver be authorized to abandon any documents containing non-
19 private information, and destroy any documents containing private information,
20 except for those records, if any, that are necessary for tax returns, and to dispose of
21 the personal property.

22 6. Completing Outstanding Closing Tasks for the Receivership and
23 Discharging and Releasing Receiver.

24 The Receiver respectfully requests that, once he has completed the above-
25 identified closing tasks, this Court thereafter close the receivership case and
26 discharge and release the Receiver, effective immediately upon the Receiver's
27 submission of the Final Declaration regarding his completion of the final closing
28 tasks.

1 **IV. ARGUMENT.**

2 **A. The Proposed Final Closing Tasks Should Be Authorized And The**
3 **Receiver Discharged And Released.**

4 A court's power to administer an equity receivership is extremely broad. SEC
5 v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset Mgmt., LLC,
6 242 F.3d 325, 331 (5th Cir. 2001); SEC v. Basic Energy & Affiliated Res., 273 F.3d
7 657, 668 (6th Cir. 2001); SEC v. Elliot, 953 F.2d 1560, 1566 (11th Cir. 1992); SEC
8 v. Wang, 944 F.2d 80, 85 (2d Cir. 1991). In the absence of controlling authority,
9 and where applicable, district courts supervising equity receiverships routinely look
10 to bankruptcy law for guidance. SEC v. Am. Capital Invs., 98 F.3d 1133, 1140 (9th
11 Cir. 1996); CFTC v. Topworth Int'l, 205 F.3d 1107, 1116 (9th Cir. 1999) (Central
12 District local rules, for instance, "direct receivers, unless otherwise ordered ... to
13 'administer the estate as nearly as possible in accordance with ... the administration
14 of estates in bankruptcy.'"); Fleet Nat'l Bank v. H&D Entm't, 926 F.Supp. 226, 240
15 n. 56 (D. Mass. 1996) ("[W]hat is permitted under the Bankruptcy Code, generally
16 is, a fortiori, permissible under receivership law.").

17 In the case administration context, courts are deferential to the business
18 judgment of bankruptcy trustees, receivers, and similar estate custodians. See, e.g.,
19 Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the
20 business management decisions of a bankruptcy trustee."); Sw. Media, Inc. v. Rau,
21 708 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the form of ... [estate
22 administration] ... rested with the business judgment of the trustee."); see also SEC
23 v. Health Maint. Ctrs., Inc., 2002 WL 34388014 (W.D. Wash. 2002) (Equating
24 bankruptcy trustees with receivers and finding that "the courts have overwhelmingly
25 applied a 'business judgment' test" to estate administration.); In re Thinking Machs.
26 Corp., 182 B.R. 365, 368 (D. Mass. 1995) ("The application of the business
27 judgment rule ... and the high degree of deference usually afforded purely economic
28

1 decisions of trustees, makes court refusal unlikely.") (rev'd on other grounds, 67
2 F.3d 1021 (1st Cir. 1995)).

3 As reported herein and in the concurrently submitted Final Report, the
4 Receiver has made all reasonable and necessary efforts to recover, review, and
5 analyze Receivership Entity business records and documents, to assemble a forensic
6 accounting report reflecting the Receivership Entities' financial activities, to recover
7 available Receivership Assets, and to develop and administer an equitable claims
8 and distribution process for the Entities' investors and creditors, resulting in
9 distributions to those with Allowed Claims of \$63,385,939.22

10 The Receiver has concluded, in his reasonable business judgment, that
11 continued administration of the instant receivership will not result in the recovery of
12 any meaningful additional Receivership Assets and will not increase the amount of
13 Assets available to the Receivership Estate. Accordingly, the Receiver has
14 concluded that it is now appropriate to close the receivership, and discharge and
15 release the Receiver. (Seaman Decl. ¶¶ 5-6.)

16 **B. The Final Fee Applications Are Reasonable And Appropriate, And**
17 **Payment Of All Outstanding Fees and Expenses Should Be**
18 **Authorized At This Time.**

19 "As a general rule, the expenses and fees of a receivership are a charge upon
20 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).
21 These expenses include the fees and expenses of the Receiver and his Professionals.
22 Decisions regarding the timing and amount of an award of fees and expenses to the
23 Receiver and his Professionals are committed to the sound discretion of the Court.
24 SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other grounds,
25 998 F.2d 922 (11th Cir. 1993)).

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27
28

1 1. The Fees and Expenses Requested in the Final Fee Applications
2 are Reasonable.

3 In determining the reasonableness of fees and expenses requested in this
4 context, the Court should consider the time records presented, the quality of the
5 work performed, the complexity of the problems faced, and the benefit of the
6 services rendered to the receivership estate. SEC v. Fifth Ave. Coach Lines, Inc.,
7 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973).

8 Here, the Final Fee Applications describe the nature of the services that have
9 been rendered, and where appropriate, the identity and billing rate of the individuals
10 performing each task. The Receiver and his Professionals have endeavored to staff
11 matters as efficiently as possible in light of the level of experience required and the
12 complexity of the issues presented. In general, the Final Fee Applications reflect the
13 Receiver's and his Professionals' customary billing rates and the rates charged for
14 comparable services in other matters, less any discounts or reductions specifically
15 identified therein. The total Receiver's and Professional's fees, if approved, will be
16 approximately 10% of the amounts recovered by the Receiver.

17 The Receiver has reviewed the Final Fee Applications, and believes the
18 hourly rates charged were appropriate, given the requirements of the instant
19 receivership, and that the total fees for which the Receiver seeks authorization for
20 payment are fair and reasonable. (Seaman Decl. ¶ 8.) The Receiver likewise
21 believes that the Estate has benefited from the services identified. (Id.)

22 2. The Fees and Expenses Incurred in the Receivership Satisfy the
23 Ninth Circuit Standard for Presumptive Reasonableness.

24 Courts in the Ninth Circuit use either the "percentage of fund" calculus or
25 apply the "lodestar" method to determine whether a fiduciary fee request is
26 appropriate. See, e.g., Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000); In re
27 Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig., 109 F.3d 602,
28 609 (9th Cir. 1997). The "percentage of fund" determines an appropriate fee as a

1 percentage of funds recovered. Powers, 229 F.3d at 1256. In evaluating the
2 propriety of a fee request with reference to the total funds recovered, the Ninth
3 Circuit has established a benchmark of 25% as presumptively reasonable. See, e.g.,
4 Powers, 229 F.3d at 1256-57; see also Petroleum Prods., 109 F.3d at 607 (25%
5 determined to be an appropriate benchmark in common fund matters).

6 An application of the "lodestar" method requires multiplying the number of
7 hours reasonably required for the services performed by the movant's reasonable
8 hourly fee to arrive at the so-called lodestar amount. See, e.g., Blum v. Stenson, 465
9 U.S. 886, 888 (1984). Once the lodestar amount is calculated, a court can then
10 adjust fees up or down depending on context and relevant factors, including the
11 expertise of counsel, complexities of litigation and risks involved, the relation of
12 fees to total recovery (essentially, a "percentage of fund" correction), and other
13 factors. In re San Vicente Med. Partners, Ltd., 962 F.2d 1402, 1410 (9th Cir. 1992).

14 Here, as reflected in the Receiver's Final Report, the Receiver's total gross
15 recoveries before payment of operating and administrative expenses is nearly \$80
16 million. As of the date of the Final Fee Applications, and **including** all fees and
17 expenses incurred and submitted for payment authorization to the Court, including
18 the fees and expenses requested for approval and payment via the Final Fee
19 Applications, the Court has approved (or should approve) a total of approximately
20 \$8,104,917.94 million in administrative fees in this matter, **inclusive** of all holdback
21 amounts and fees and expenses paid to-date. In other words, assuming the Court
22 were to authorize the Receiver to make payment of the administrative and
23 professional fees and expenses addressed in the Final Fee Applications, total
24 payments would be approximately 10.1% of all funds recovered for the benefit and
25 administration of the Estate.

26 Accordingly, the total fees and expenses incurred by the Receiver and his
27 Professionals in this matter fall far **below** the 25% benchmark established by the
28 Ninth Circuit as presumptively reasonable.

1 An application of the lodestar method to the fees and cost incurred to date
2 likewise supports the Final Fee Applications, particularly given the complexity of
3 the business and financial activities of the Entities, the lack of documentation
4 initially available to the Receiver and the resultant investigation he was required to
5 undertake, resulting in a detailed forensic accounting, the complexity of tax issues
6 encountered by the Receiver, and the Receiver's success in maximizing the value of
7 the Entities' Properties and other Receivership Assets. The Receiver therefore
8 respectfully requests that the Court grant the Final Fee Applications and approve the
9 fees and expenses requested therein.

10 3. The Fees and Expenses Requested in the Final Fee Applications
11 have been Submitted to the Commission, Without Objection.

12 Courts often consider the judgment and experience of the Commission
13 relating to receiver compensation. "[I]t is proper to [keep] in mind that the
14 [Commission] is about the only wholly disinterested party in [this] proceeding and
15 that ... its experience has made it thoroughly familiar with the general attitude of the
16 Courts and the amounts of allowances made in scores of comparable proceedings."
17 In re Phila. & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (D.C. Pa. 1945).
18 Indeed, the Commission's perspectives are not "mere casual conjectures, but are
19 recommendations based on closer study than a district judge could ordinarily give to
20 such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal
21 quotation marks omitted). In fact, "recommendations as to fees of the
22 [Commission] may be the only solution to the 'very undesirable subjectivity with
23 variations according to the particular judge under particular circumstances' which
24 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit
25 basis.'" Id. Thus, the Commission's perspective on the matter should certainly be
26 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364
27 F. Supp. at 1222.

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1 In order to ensure that the fees and expenses requested in the Final Fee
2 Applications are appropriate, the Receiver and his Professionals have submitted
3 their respective invoices to the Commission for review. The Commission has not
4 objected. The Commission's satisfaction with the subject invoices therefore merits
5 significant deference. As the Phila. & Reading Coal & Iron Co. court observed, the
6 Commission is "thoroughly familiar with ... the amounts of allowances made in
7 scores of comparable proceedings." 61 F.Supp. at 124. Indeed, the Commission is
8 likely in the best position to measure the fees and expenses requested here against
9 those incurred in other, similar proceedings, and cases of similar complexity.

10 The Receiver and his Professionals, therefore, respectfully request that the
11 Court approve all requested fees and expenses as identified in the Final Fee
12 Applications.

13 4. The Receiver Should be Authorized to Pay Allowed Fees and
14 Expenses from Cash on Hand.

15 By their Final Fee Applications, the Receiver and his Professionals
16 respectfully request that the Court exercise its broad discretion and enter an order
17 permitting the payment of fees and expenses requested from the cash on-hand that
18 the Receiver presently holds for the benefit of the Estate.² Specifically, the Receiver
19 requests that this Court authorize the payment of previously approved holdbacks in
20 the aggregate amount of \$900,113.72, aggregate fees and expenses for the period
21 from October 1, 2023 through May 3, 2024 in the amount of \$179,128.85, and to set
22 aside an aggregate reserve in the amount of \$50,000 for fees and expenses incurred
23 in connection with the wind-down and termination of the instant receivership.

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28 ² As reflected above, any funds remaining thereafter would be remitted to the
Commission, for payment to the United States Treasury.

1 **V. CONCLUSION.**

2 Based on the Receiver's cumulative findings and the fulfillment of his duties
3 under the Appointment Order and other Court orders in this receivership case, the
4 Receiver respectfully requests that this Court enter an order:

5 1. Approving the Final Report and Accounting and ratifying and
6 confirming that the actions taken by the Receiver were in the best interests of the
7 receivership estate;

8 2. Authorizing the payment of the fees and expenses requested in the
9 Final Fee Applications;

10 3. Authorizing the Receiver to make a corrective distribution of
11 \$58,061.38 to 24 investors;

12 4. Authorizing the Receiver to submit final tax returns for the
13 Receivership Entities and pay tax preparation fees and post- closing professional
14 fees not to exceed \$50,000;

15 5. Authorizing the Receiver to abandon or destroy, as necessary,
16 Receivership Entity documents retained by the Receiver;

17 6. Authorizing and instructing the Receiver to complete the outstanding
18 wind-down and closing tasks identified herein, and thereafter closing the instant
19 receivership case and discharging and releasing the Receiver, without further order
20 of the Court, effective upon receipt of the Final Declaration from the Receiver
21 reflecting his completion of the foregoing tasks.

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7. Authorizing the Receiver to pay all funds in the remaining in the receivership estate anticipated to be \$527,796.42 based on the Court's approval of the Receiver's Final Accounting & Report, and pay any other funds that may be paid to the Receiver following the Final Account & Report to the Securities and Exchange Commission for payment to the United States Treasury.

Dated: May 14, 2024